LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **September 13, 2005** AGENDA ITEM NO.: 9

CONSENT: REGULAR: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **ZONING ORDINANCE AMENDMENT(S) – Section 35.1-11.2, Terms beginning with "A", Section 35.1-27, Nonconforming Uses, Sections 35.1-11.8(d) & 35.1-56.1(a), Group Homes**
SUBDIVISION ORDINANCE AMENDMENT – Section 24.1-45, Exceptions
CITY CODE AMENDMENT – Section 21-61 & 21-68, Inoperative Motor Vehicles

RECOMMENDATION: Approval of the proposed Zoning Ordinance, Subdivision Ordinance & City Code Amendments.

SUMMARY: Revisions to the Code of Virginia have resulted in the need for amending the pertinent text of the Zoning Ordinance, Subdivision Ordinance & City Code. The proposed amendments would:

- Amend Section 35.1-11.2, Terms beginning with "A" of the Zoning Ordinance by adding the definition of an "automobile graveyard" as defined by Section 33.1-384 of the Code of Virginia.
- Amend Section 35.1-27, Nonconforming Uses of the Zoning Ordinance to give authority for determining the condition of nonconforming billboards to the Virginia Department of Transportation (VDOT) as required by Section 33.1-370.2 of the Code of Virginia.
- Amend Sections 35.1-11.8(d) & 35.1-56(a), Group Homes to allow group homes for the elderly, infirm and physically disabled with nor more than four (4) occupants as a use allowed by right in all residential zoning districts as required by Section 15.2-2291(c) of the Code of Virginia.
- Amend Section 24.1-45, Exceptions of the Subdivision Ordinance to allow the agent of the Subdivision Ordinance to approve the vacation of interior subdivision lot lines by a deed as allowed by Section 15.2-2275 of the Code of Virginia.
- Amend Sections 21-61 & 21-68, Inoperable Motor Vehicles of the City Code to further define how inoperable motor vehicles must be screened and to allow one (1) additional inoperable motor vehicle on the property if it is screened and is actively being used in the restoration of another vehicle as required by Section 15.2-905 of the Code of Virginia.

The Planning Commission recommended approval of the Ordinance & City Code amendments because:

- The *Comprehensive Plan 2002 – 2020* recommends amending existing development regulations to ensure clarity, ease of interpretation and administration and effectiveness in promoting high quality development. ***Citywide Land Use & Development, Goal 1, Objective 1.A, pg 5.12***
- The Zoning Ordinance, Subdivision Ordinance & City Code amendments are either required by or authority is given by revisions to the Code of Virginia.

PRIOR ACTION(S):

August 10, 2005: Planning Division recommended approval of the Zoning Ordinance, Subdivision Ordinance & City Code amendments.
Planning Commission recommended approval (6-0) with 1 member absent (Mr. Ray Pulliam) of the Zoning Ordinance, Subdivision Ordinance & City Code amendments.

FISCAL IMPACT: N/A

CONTACT(S):
Rachel Flynn/ 455-3902
Tom Martin/ 455-3909

ATTACHMENT(S):
- Ordinances
- Code of Virginia Sections
- PC Report
- PC Minutes

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTIONS 21-61. KEEPING RESTRICTED; 21-68. ALTERNATE PROCEDURE; 24.1-45. EXCEPTIONS; 35.1-11.2. TERMS BEGINNING WITH "A"; 35.1-11.8. TERMS BEGINNING WITH "G" THROUGH "K"; 35.1-27. NONCONFORMING USES; AND, 35.1-56.1. GROUP HOMES; OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTIONS RELATING TO THE CITY'S SUBDIVISION AND ZONING ORDINANCES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Sections 21-61, 21-68, 24.1-45, 35.1-11.2, 35.1-11.8, 35.1-27, and 35.1-56.1, of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Sec. 21-61. Keeping restricted.

It shall be unlawful for any person, firm or corporation to keep, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential, business or agricultural purposes, any motor vehicle, trailer, or semitrailer, or part thereof which is inoperative. As used in this article, an "inoperative motor vehicle" shall mean any motor vehicle which is not in operating condition; or does not display valid license plates; or does not display an inspection decal that is valid or has expired no more than sixty (60) days prior. The provisions of this section shall not apply to a licensed business which is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor. As used in this section "shielded or screened from view" means kept within a fully enclosed building or structure or hidden from sight by plantings or fences so the motor vehicle is not visible by someone standing at ground level from outside the property on which the subject vehicle is located. Covering an inoperative vehicle by an auto cover, tarpaulin or similar device does not constitute "shielded or screened from view." Notwithstanding the other provisions of this section, if the owner of an inoperative motor vehicle can demonstrate that he is actively restoring or repairing the vehicle, and if it is shielded or screened from view, the vehicle and one additional inoperative motor vehicle that is shielded or screened from view and being used for the restoration or repair may remain on the property.

Sec. 21-68. Alternate procedure.

Nothing in this article shall be construed to restrict in any way the right of the city to follow the procedures set forth in Sections ~~46.1-3~~ 46.2-1213 and ~~46.1-555.1~~ 46.2-1200 through ~~46.1-555.2~~, 46.2-1208 Code of Virginia (1950) as amended, relating to abandoned motor vehicles.

Sec. 24.1-45. Exceptions.

Where the subdivider can show that a provision of these standards would cause unnecessary hardship if strictly adhered to, or where, because of topographical or other conditions peculiar to the site, in the opinion of the agent a departure may be made without destroying the intent of such provisions, the agent may authorize an exception. When the agent or subdivider desires, the matter shall be referred to the commission or city council for review. Any exceptions authorized under the provisions of this section shall be stated in writing on the plat, by the agent, commission or city council with the reasoning set forth on which the departure was justified.

The agent may allow the vacating of lot lines by recordation of a deed providing that no easements or utility rights-of-way located along any lot lines to be vacated shall be extinguished or altered without the express consent of all persons holding any interest therein. The deed shall be approved in writing, on its face, by the agent. The deed shall reference the recorded plat by which the lot line was originally created.

Sec. 35.1-11.2. Terms beginning with "A".

Terms used in the zoning ordinance, when defined in this section, shall have the following meaning:

(a) Accessory use or accessory:

(1) A use conducted on the same zoning lot as the principal use to which it is related (whether located within the same or an accessory building or other structure, or on an accessory use of land), except that, where specifically provided in the applicable regulations, accessory off-street parking or loading need not be located on the same zoning lot.

(2) A use which is clearly incidental to, and customarily found in connection with, such principal use.

(3) A use subordinate in area, floor area, intensity, extent and purpose to the principal use.

(4) A use either in the same ownership as such principal use, or operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers or visitors of the principal use.

(5) When "accessory" is used in the text, it shall have the same meaning as "accessory use" (see Section 35.1-24).

(b) Agriculture: Any use of land which involves the tilling of soil, the growing of crops or plant growth of any kind, or the raising of livestock or poultry for profit. "For profit" means in excess of what a family would normally grow or raise for its own use or consumption, and shall include the processing and retail sale, in a farm produce stand, or otherwise on the premises, of the products of only the farm on which such processing is conducted.

(c) Airport or air landing field: Any area of land or water designated and set aside for the landing or taking-off of aircraft, the discharge or receiving of cargoes and/or passengers, or the repair, fueling or storage of aircraft.

(d) Amend or amendment: Any repeal, modification or addition to a regulation; any new regulation; any change in the numbers, shape, boundary, or area of a district or any repeal or abolition of any map, part thereof, or addition thereto.

(e) Apartment: A room or suite of two (2) or more rooms, which is designed or intended for occupancy by, or which is occupied by, one (1) family doing its cooking therein.

(f) Apartment house: See section 35.1-11.5, Dwelling, multi-family.

(g) Arterial or arterial street: A public street currently classified as an arterial or programmed for improvement to arterial status in the most recently approved city major thoroughfare plan.

(h) Automobile graveyard: Any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind that are incapable of being operated and which it would not be economically practical to make operative, are placed, located or found. The movement or rearrangement of vehicles within an existing lot or facility does not render this definition inapplicable. The provisions established by this definition shall begin with the first day that the vehicle is placed on the subject property.

(~~h~~ i) Automobile service station: A building, lot, or both, in or upon which gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail, and where, in addition, the following services may be rendered and sales made, and no other:

(1) Sales and servicing of spark plugs, batteries, and distributors and distributor parts.

(2) Tire servicing and repair, but not recapping or regrooving.

(3) Replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors and the like.

(4) Radiator cleaning and flushing.

(5) Washing and polishing, and sale of automotive washing and polishing materials.

(6) Greasing and lubrication.

(7) Providing and repairing fuel pumps, oil pumps and lines.

(8) Minor servicing and repair of carburetors.

(9) Emergency wiring repairs.

(10) Adjusting and repairing brakes.

(11) Minor motor adjustments not involving removal of the head or crankcase or racing the motor.

(12) Sales of cold drinks, packaged foods, tobacco and similar convenience goods for filling station customers as accessory and incidental to principal operation.

(13) Provision of road maps and other informational material to customers; provision of restroom facilities.

(14) Virginia state inspection station.

Uses permissible at an automobile service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition or other work involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in service stations.

Sec. 35.1-11.8. Terms beginning with "G" through "K".

Terms used in the zoning ordinance, when defined in this section, shall have the following meaning:

(a) Garden apartment units: Group multiple dwellings consisting of more than one (1) main building containing more than one (1) unit per building for single-family occupancy.

(b) Gasoline station: See Section 35.1-11.2, Automobile service station.

(c) Grade: The intersection of the ground with a wall of a building after all earth movement is completed on a project.

(d) Group Home: A residential facility wherein (a) the operator is not legally related to the individuals supervised and may be licensed by the state, and wherein (b) four (4) or more individuals are provided with room, board, specialized and distinctive care, and daily supervision. For the purpose of the zoning ordinance, a facility providing care to less than four (4) persons shall not be considered a group home. The term "Group Home" would include but not be limited to such groups as: foster family homes, homes for adults, abused women, the retarded or mentally handicapped, or physically handicapped. This definition does not include pre-release or post-release individuals who have been incarcerated. Facilities for day care for adults or children shall adhere to Section 35.1-54, Care Centers, of the zoning ordinance.

However, a residential facility in which no more than eight (8) mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, shall be

considered for all purposes residential occupancy by a single family. For the purposes of this section, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Section 54.1-3401 of the state code. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. This type of residential facility shall be deemed to be any group home or other residential facility for which the department of mental health, mental retardation and substance abuse services is the licensing authority pursuant to this Code (1990, c.814).

A residential facility, in which no more than four (4) aged, infirm or physically disabled persons reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family. No conditions, more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such a facility. For purposes of the zoning ordinance, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Virginia department of social services is the licensing authority pursuant to the code of Virginia.

(e) Guest: Any person hiring and occupying a room for sleeping purposes.

(f) Height of building: See Section 35.1-11.3, Building, height of.

(g) Historic area, historic place, or historic structure:

(1) Any structure, area containing structures, or place in which historic events occurred; or having special public value because of notable architectural or other features, relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

(2) Any structure that is:

a. listed individually in the national register of historic places (a listing maintained by the department of the interior) as meeting the requirements for individual listing on the national register;

b. certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

c. individually listed on a state inventory or historic places in states with historic preservation programs which have been approved by the secretary of the interior; or

d. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

i. by an approved state program as determined by the secretary of the interior or

ii. directly by the secretary of the interior in states without approved programs.

(h) Historic building map: The map of Lynchburg indicating certain structures as historic buildings.

(i) Home occupation: An accessory use which:

(1) Is clearly incidental to or secondary to the residential use of a dwelling unit.

(2) Is customarily and traditionally carried on within a dwelling unit by one (1) or more occupants of such dwelling unit, except that, in connection with the practice of a profession, one (1) person not residing in such dwelling unit may be employed.

(3) Occupies not more than twenty-five (25) per cent of the total floor area of such dwelling unit, and in no event more than five hundred (500) square feet of floor area.

(j) Homes association: An incorporated, nonprofit organization operating under recorded land agreements through which (a) each lot and/or homeowner in a planned unit or other described land area is automatically a member; and (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the home association's activities, such as common property maintenance.

(k) Hospitals: An institution receiving in-patients and rendering medical, surgical, and/or obstetrical care to private and charity patients, and usually including research and training activities. This shall include general hospitals and institutions in which service is limited to special fields, such as cardiac, eye, ear, nose and throat, pediatric, orthopedic, skin and cancer, tuberculosis, chronic disease and obstetrics. Hospital patients generally require intensive care for periods generally not exceeding several months. (See also Section 35.1-11.10, Nursing Home, and Section 35.1-11.12, Sanatorium.)

(l) Hotel: A building or part thereof containing five (5) or more guest rooms, without kitchens, where lodging is provided for compensation, excluding a fraternity or sorority house, a school or college dormitory, or a tourist home as defined in Section 35.1-11.13.

(m) Illegal use: Any use, whether of a building or other structure or of a tract of land, in which a violation of any provision of the zoning ordinance has been committed or shall exist.

(n) Industrial district: Any district whose designation begins with the letter “I”.

(o) Inventory: The inventory of historic landmarks, buildings and structures as prepared by the board of historic and architectural review.

(p) Junk yard: The use of any space, whether inside or outside a building, for the abandonment, storage, keeping, collection, disassembling or bailing of paper, rags, scrap metal, or other scrap or discarded materials, or for the abandonment, demolition, dismantling, or salvaging of automobiles or other vehicles or machinery or parts thereof; provided, that this definition shall not apply to any such use conducted solely as an accessory use and occupying not more than one hundred (100) square feet of the area of any lot other than any portion of that half thereof that adjoins any street.

(q) Kennel: Any building, enclosure, structure, establishment and/or land where dogs, cats, household pets or any other domestic animals are sheltered, fed or watered, groomed, shown, trained, bred, boarded and exercised, cared for or sold for either commercial gain or in exchange for a fee.

Sec. 35.1-27. Nonconforming uses.

(a) Legislative intent. In the placing of zoning district regulations in the city's land through the zoning ordinance, there are a number of land uses and activities on the land which exist prior to the enactment of the zoning ordinance and which do not conform to the regulations herein. These nonconforming uses are, in most cases, incompatible with their surrounding uses, since the objective of district regulations is to permit compatible uses. Therefore, some limitations on the continued operation of nonconforming uses is appropriate in the public interest. While they are generally permitted to remain, the regulations herein restrict their further intensification or expansion and provide for their prohibition, if they are discontinued for a two (2) year period of time.

(b) Continuing existing uses. Except as otherwise provided in the zoning ordinance, the lawfully permitted use of land, buildings or structures existing at the time of the adoption of the zoning ordinance may be continued, although such use does not conform to the standards specified by this ordinance for the zone in which such land or building is located. Said uses shall be deemed nonconforming uses.

(c) Existing conditional uses. Any use lawfully existing at the time of the adoption of the zoning ordinance, or of any amendment thereto, in the district in which such use is classified herein as a conditional use, shall continue as a conditional use in such district.

(d) Completion of buildings under construction. Any building, the construction of which has been started pursuant to plans on file with the division of inspections and for which a lawful building permit was issued before the effective date of the zoning ordinance or of an amendment thereto, and the ground story framework of which, including the second tier of beams, has been completed within one (1) year after the adoption of this ordinance or amendment thereto, may be completed in accordance with said plans on file with the division of inspections; provided that such construction is diligently prosecuted and the building is completed within two (2) years of the adoption of the zoning ordinance.

(e) Nonconforming use of land with minor improvements. Where no building is involved, the nonconforming use of land with minor improvements may be continued; provided, however:

(1) That no such nonconforming use shall be enlarged or increased, nor shall it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of the zoning ordinance, unless specifically allowed by other provisions in this ordinance.

(2) That no such nonconforming use be moved, in whole or in part, to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of the adoption of the zoning ordinance.

(3) That if such nonconforming use of land, or any portion thereof, ceases for any reason for any continuous period of more than two (2) years or is changed to a conforming use, any future use of the land shall be in conformity with the provisions of the zoning ordinance.

(4) That no nonconforming use of land shall be changed to another nonconforming use.

(f) Nonconforming use of buildings and structures.

(1) Enlargements or extensions. A building or a structure, the use of which does not conform to the use regulations for the district in which it is situated, shall not be enlarged, extended, reconstructed or structurally altered, unless the use therein is changed to a conforming use or the use extended is a conforming use.

(2) Structural alterations. Such nonconforming building or structure shall not be reconstructed or structurally altered, unless such reconstruction or alterations are required by law; provided, however, that except in the case of billboards such maintenance and repair work as is required to keep a nonconforming building or structure in sound condition shall be in conformance with section 33.1-3702 of the Code of Virginia. In the case of billboards, any changes in the advertising message shall not be deemed an alteration.

(3) Change of use. If no structural alterations are made, any nonconforming use of a building or structure may, as a conditional use after public notice and hearing, be changed to another nonconforming use; provided that the planning commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally or more restrictive than the existing nonconforming use. In permitting such change, the planning commission may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

(4) Discontinuing, moving. If any nonconforming use of a building or structure ceases for any reason for a continuous period of more than two (2) years or is changed to a conforming use or if the building or structure in which such use is conducted or maintained is moved for any distance whatever, for any reason, then any future use of such building shall be in conformity with the standards specified by this ordinance for the district in which such building is located.

If any building or structure in which any nonconforming use is conducted or maintained is hereafter removed, the subsequent use of the land on which such building was located, and the subsequent use of any building or

structure thereon, shall be in conformity with the standards specified by the zoning ordinance for the district in which such land or building is located.

(g) Nonconformity, other than use. A building that is conforming in use, but which does not conform to the height, yard, land coverage, parking or loading requirements of the zoning ordinance, shall not be considered to be nonconforming within the meaning of Section 35.1-27. However, no permit shall be issued that will result in the increase of any such nonconformity.

(h) Nonconforming signs. All signs which do not conform with any of the sign regulations of the zoning ordinance, including regulations governing size, height, installation, location, and lighting, shall be deemed nonconforming and may be continued so long as the existing use continues and is not discontinued for more than two (2) years, and so long as the nonconforming sign is maintained in its then structural condition. Except as provided in Sections 35.1-26 through 35.1-26.16.3 (e) whenever a nonconforming sign is enlarged, extended, reconstructed or structurally altered it shall conform to the existing zoning regulations. However, a nonconforming sign may be re-faced without losing its nonconforming status. Whenever a nonconforming sign requires repairs in a dollar amount greater than fifty percent (50%) of the replacement cost of the entire sign such sign shall be brought into compliance with the existing zoning regulations. A nonconforming sign shall not be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming sign.

(i) In order to make repairs to a nonconforming billboard sign, the owner shall make a written request to the commonwealth transportation commissioner as provided in Section 33.1-370.2 of the Code of Virginia and submit the documentation required by 24 VAC 30-120-170. The commissioner shall review the written request and if the commissioner determines that the cost of requested repairs does not exceed a dollar amount greater than fifty percent (50%) of the current replacement cost of the entire billboard sign or structure, the commissioner shall provide the owner of the billboard sign with a letter approving the billboard sign repairs. However, in no case shall a nonconforming billboard sign be replaced or rebuilt if the cost of the replacement or rebuilding exceeds fifty percent (50%) of the current replacement cost. The owner of the billboard sign shall apply for a building permit from the city and provide a copy of the approval letter from the commissioner as part of the application for the building permit. The commissioner's determination as to whether the owner of the billboard sign has complied with this section shall be binding upon the city, unless the city's building official, for good cause shown, submits to the commissioner documentation objecting to the commissioner's determination, within thirty (30) days of the building permit application, with a copy of such documentation being provided to the billboard sign owner. The commissioner shall consider any documentation submitted by the building official and shall reissue a determination in accordance with this section, which determination shall be binding upon the city, unless the city's building official appeals such decision in accordance with the provisions of the administrative process act.

(~~i~~ j) Restoration of damaged building and structures. If any nonconforming building or structure is damaged to an extent of more than fifty percent (50%) of the value of the structure above the foundation, as determined by the division of inspections, no repairs or reconstruction shall be made unless every portion of such building or structure is made to conform to all the regulations of this zoning ordinance for the district in which it is located. If the structure is not restored, it must be removed at the owner's expense within sixty (60) days. Where the destruction of such nonconforming structure is less than fifty percent (50%), as described above, it may be restored in substantially the same location and the nonconforming use continued. Nothing in the zoning ordinance shall prevent the strengthening or restoring to a safe condition of any wall declared to be unsafe by the division of inspections.

Sec. 35.1-56.1. Group homes.

The intent of the provisions for group homes is to promote housing opportunities for those individuals that have had difficulty in obtaining adequate housing.

Group homes may be permitted by conditional use permit in residential districts if the following requirements are met:

(a) Any applicable state health department regulations or other regulatory licensing for group homes shall be met. [Note the exception of Section 35.1-11.8(d) for no more than eight (8) mentally ill persons and no more than four (4) aged, infirm or physically disabled persons.]

(b) For residents over eighteen (18) years of age, there shall be an appropriately enclosed outside recreation area of not less than thirty (30) square feet per resident enrolled; for residents eighteen (18) years of age or less, there shall be an appropriately enclosed outside recreation area of not less than seventy-five (75) square feet per person using the facility at any one time.

(c) The movement of traffic through the street on which the facility is located shall be capable of being controlled to the degree necessary to allow ingress and egress.

(d) The minimum area and frontage regulations shall be the following in all districts except where the center is a part of a multifamily building or group of buildings:

Number of persons enrolled	Lot size (square feet)	Frontage (feet)
4 to 10	7,000	70
11 to 20	10,000	100
Over 20	500 per person	200

A facility for less than four (4) individuals shall comply with the definition of “family” of the zoning ordinance.

(e) Screening as specified in Section 35.1-23 of this ordinance shall be provided, for the other perimeter of the parking and of the recreation area.

(f) Setbacks for the facility shall comply with the applicable zoning regulations of the district in which the facility is located.

(g) Minimum off-street parking and loading space shall be provided as follows:

A minimum of two (2) parking spaces is required for each group home; plus

One (1) parking space for every eight (8) residents, or one (1) for every resident with a car, which is greater; and

One (1) parking space for every three (3) staff members.

(h) The planning commission may prescribe additional conditions which are necessary or desirable in its judgment.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: _____
Clerk of Council

113L

§ 33.1-348. Junkyards. (Ordinance #1)

(a) For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the highways within this Commonwealth.

(b) For the purpose of this section the following definitions shall apply:

(1) "Junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) "Automobile graveyard" shall mean any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind that are incapable of being operated and which it would not be economically practical to make operative, are placed, located or found. The movement or rearrangement of vehicles within an existing lot or facility does not render this definition inapplicable. The provisions established by this subdivision shall begin with the first day that the vehicle is placed on the subject property.

(3) "Junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(4) "Interstate system" shall mean the system presently defined in subsection (e) of § 103 of Title 23, United States Code.

(5) "Primary highway" shall mean any highway within the State Highway System as established and maintained under Article 2 (§ 33.1-25 et seq.), Chapter 1 of this title, including extensions of such System within municipalities.

(6) "Federal-aid primary highway" shall mean any highway within that portion of the State Highway System as established and maintained under Article 2 (§ 33.1-25 et seq.), Chapter 1 of this title, including extensions of such System within municipalities, which has been approved by the Secretary of Commerce pursuant to subsection (b) of § 103 of Title 23, United States Code.

(7) "Visible" shall mean capable of being seen without visual aid by a person of normal visual acuity.

(c) No junkyard shall be hereafter established, any portion of which is within 1,000' of the nearest edge of the right-of-way of any interstate or primary highway or within 500'

of the nearest edge of the right-of-way of any other highway or city street, except the following:

(1) Junkyards which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the highway or city street, or otherwise removed from sight.

(2) Junkyards which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board.

(3) Junkyards which are not visible from the main-traveled way of the highway or city street.

(d) Any junkyard lawfully in existence on April 4, 1968, which is within 1,000' of the nearest edge of the right-of-way and visible from the main-traveled way of any interstate or federal-aid primary highway, and not located within an industrial area, shall be screened, if feasible, by the Commonwealth Transportation Commissioner at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way, so as not to be visible from the main-traveled way of such highways.

Any junkyard lawfully in existence on April 4, 1968, which is within 1,000' of the nearest edge of the right-of-way of any other primary highway or within 500' of the nearest edge of the right-of-way of any other highway and visible from the main-traveled way of such highway, and not located within an industrial area, may be screened by the Commonwealth Transportation Commissioner in the same manner as junkyards adjacent to interstate or federal-aid primary highways.

The Commonwealth Transportation Commissioner is hereby authorized to acquire by purchase, gift or the power of eminent domain such lands or interests in lands as may be necessary to provide adequate screening of such junkyards.

(e) When the Commonwealth Transportation Commissioner determines that the topography of the land adjoining an interstate or federal-aid primary highway will not permit adequate screening of such junkyards or the screening of such junkyards would not be economically feasible, the Commonwealth Transportation Commissioner shall have the authority to acquire by gift, purchase or the power of eminent domain, such interests in lands as may be necessary to secure the relocation, removal, or disposal of the junkyards, and to pay for the costs of relocation, removal, or disposal, thereof. When the Commonwealth Transportation Commissioner determines that the topography of the land adjoining any other highway will not permit adequate screening or such would not be feasible, the Commissioner may exercise the same authority to relocate such junkyards as is vested in him in regard to interstate and federal-aid primary highways.

(f) Any junkyard which comes into existence after April 4, 1968, and which cannot be made to conform to this section, is declared to be a public and private nuisance and may

be forthwith removed, obliterated or abated by the Commissioner or his representatives. The Commissioner may collect the cost of such removal, obliteration or abatement from the person owning or operating such junkyard.

(g) The Commonwealth Transportation Board is authorized to enter into agreements with the United States as provided in 23 U.S.C. § 136 with respect to control of junkyards.

(h) The Commonwealth Transportation Commissioner shall not be required to expend any funds for screening or relocation under this section unless and until federal-aid matching funds are made available for this purpose.

(i) Any person violating any provision of this section shall be guilty of a misdemeanor.

(Code 1950, § 33-279.3; 1958, c. 552; 1962, c. 8; 1966, c. 485; 1968, c. 240; 1970, c. 322; 1973, c. 328; 2005, c. 291.)

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes. (Ordinance #2)

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307. Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.

The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than $10 nor more than $1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than $10 nor more than $1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than $100 nor more than $1,500.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefore.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for the clustering of single-family dwellings so as to preserve open space.

a. A locality may, at its option, provide in its zoning or subdivision ordinance standards, conditions and criteria for clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space and compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality determines, at its option, to provide for clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different zoning area within the locality.

If proposals for clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt developments of two acres or less from the provisions of this subdivision.

b. Additionally, in any zoning or subdivision ordinance adopted pursuant to subdivision A 12, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide in its zoning or subdivision ordinance standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions and criteria, it shall be permitted by right and approved administratively by the locality staff in the same manner provided in subdivision A 12 a, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit or rezoning.

c. Any locality that provides for clustering of single-family dwellings and preservation of open space upon approval of a special exception, special use permit, conditional use permit or rezoning shall no later than July 1, 2004, amend its applicable land use ordinance to comply with the provisions of subdivision A 12. Any land use provisions for clustering of single-family dwellings and preservation of open space adopted after the effective date of this act shall comply with subdivision A 12. Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local government land use ordinance in affect as of January 1, 2002, that provides for the clustering of single-family dwellings and preservation of open space development by right without requiring either a special exception, special use permit, conditional use permit or other discretionary approval may remain in effect at the option of the locality.

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.

(Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, cc. 529, 543, 587; 1998, c. 385; 1999, c. 792; 2000, cc. 764, 817; 2001, c. 240; 2002, cc. 547, 703; 2005, cc. 625, 677.)

§ 33.1-370.2. Maintenance and repair of nonconforming billboard signs. (Ordinance #3)

Notwithstanding any other provision of law, maintenance of and repairs to nonconforming billboard signs shall be governed by this section and any applicable regulations promulgated by the Commonwealth Transportation Commissioner, known as the "Control and Continuance of Nonconforming Signs, Advertisements and Advertising Structure." Nonconforming billboard signs shall be maintained in a good state of repair and shall be subject to removal for failure to do so, in accordance with § 33.1-375. In order to make repairs to a nonconforming billboard sign, the owner shall make a written request to the Commissioner and submit the documentation required by 24 VAC 30-120-170. The Commissioner shall review the written request and if the Commissioner determines that the cost of requested repairs does not exceed a dollar amount greater than 50 percent of the current replacement cost of the entire billboard sign or structure, the Commissioner shall provide the owner of the billboard sign with a letter approving the billboard sign repairs. However, in no case shall a nonconforming billboard sign be replaced or rebuilt if the cost of the replacement or rebuilding exceeds 50 percent of the current replacement cost. The owner of the billboard sign shall apply for a building permit from the locality in which the billboard sign is located and provide a copy of the

approval letter from the Commissioner as part of the application for the building permit. The Commissioner's determination as to whether the owner of the billboard sign has complied with this section shall be binding upon the locality, unless the building official, for good cause shown, submits to the Commissioner documentation objecting to the Commissioner's determination, within 30 days of the building permit application, with a copy of such documentation being provided to the billboard sign owner. The Commissioner shall consider any documentation submitted by the building official and shall reissue a determination in accordance with this section, which determination shall be binding upon the locality.

§ 15.2-2291. Group homes of eight or fewer single-family residence. (Ordinance #4)

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority pursuant to this Code.

B. Zoning ordinances in counties having adopted the county manager plan of government and any county with a population between 55,800 and 57,000 for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances in any city with a population between 60,000 and 70,000 for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

(1990, c. 814, § 15.1-486.3; 1993, c. 373; 1997, c. 587; 1998, c. 585.)

§ 15.2-2275. Relocation or vacation of boundary lines. (Ordinance #5)

Any locality may provide, as a part of its subdivision ordinance, that the boundary lines of any lot or parcel of land may be vacated, relocated or otherwise altered as a part of an otherwise valid and properly recorded plat of subdivision or resubdivision (i) approved as provided in the subdivision ordinance or (ii) properly recorded prior to the applicability of a subdivision ordinance, and executed by the owner or owners of the land as provided in § 15.2-2264. The action shall not involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas. No easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein.

Alternatively, a locality may allow the vacating of lot lines by recordation of a deed providing that no easements or utility rights-of-way located along any lot lines to be vacated shall be extinguished or altered without the express consent of all persons holding any interest therein. The deed shall be approved in writing, on its face, by the local governing body or its designee. The deed shall reference the recorded plat by which the lot line was originally created.

(1982, c. 294, § 15.1-483.1; 1993, c. 121; 1997, cc. 524, 545, 587; 2005, c. 338.)

§ 15.2-905. Authority to restrict keeping of inoperable motor vehicles, etc., on residential or commercial property; removal of such vehicles. (Ordinance #6)

A. The governing bodies of the Counties of Arlington, Fairfax, Henrico, Loudoun and Prince William; any town located, wholly or partly, in such counties; and the Cities of Alexandria, Fairfax, Falls Church, Hampton, Lynchburg, Manassas, Manassas Park, Newport News, Petersburg, Portsmouth, Roanoke and Suffolk may by ordinance prohibit any person from keeping, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned or used for residential purposes, or on any property zoned for commercial or agricultural purposes, any motor vehicle, trailer or semitrailer, as such are defined in § 46.2-100, which is inoperable.

The locality in addition may by ordinance limit the number of inoperable motor vehicles which any person may keep outside of a fully enclosed building or structure.

As used in this section, notwithstanding any other provision of law, general or special, "shielded or screened from view" means not visible by someone standing at ground level from outside of the property on which the subject vehicle is located.

As used in this section, an "inoperable motor vehicle" means any motor vehicle, trailer or semitrailer which is not in operating condition; or does not display valid license plates; or does not display an inspection decal that is valid or does display an inspection decal that has been expired for more than 60 days. The provisions of this section shall not apply to a

licensed business which is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor.

B. The locality may, by ordinance, further provide that the owners of property zoned or used for residential purposes, or zoned for commercial or agricultural purposes, shall, at such time or times as the governing body may prescribe, remove therefrom any inoperable motor vehicle that is not kept within a fully enclosed building or structure. The locality may remove the inoperable motor vehicle, whenever the owner of the premises, after reasonable notice, has failed to do so. Notwithstanding the other provisions of this subsection, if the owner of such vehicle can demonstrate that he is actively restoring or repairing the vehicle, and if it is shielded or screened from view, the vehicle and one additional inoperative motor vehicle that is shielded or screened from view and being used for the restoration or repair may remain on the property.

In the event the locality removes the inoperable motor vehicle, after having given such reasonable notice, it may dispose of the vehicle after giving additional notice to the owner of the premises. The cost of the removal and disposal may be charged to either the owner of the inoperable vehicle or the owner of the premises and the cost may be collected by the locality as taxes are collected. Every cost authorized by this section with which the owner of the premises has been assessed shall constitute a lien against the property from which the inoperable vehicle was removed, the lien to continue until actual payment of the cost has been made to the locality.

(1991, c. 673, § 15.1-11.03; 1992, c. 490; 1995, c. 58; 1997, cc. 587, 741; 1999, c. 901; 2004, cc. 508, 934; 2005, c. 775.)